BEFORE THE TENNESSEE REGULATORY AUTHORITY

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IN RE:

T.R.A. DOCKET ROOM

APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF

Docket No. 03-00438

CONVENIENCE AND NECESSITY TO PROVIDE TELECOMMUNICATIONS

SERVICES AS A CARRIERS' CARRIER:

## MOTION TO QUASH OR, IN THE ALTERNATIVE, FOR PROTECTIVE ORDER AND REQUEST FOR EMERGENCY CONSIDERATION

Jackson Energy Authority ("JEA") hereby moves to quash the subpoenas for John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T. Pope, copies of which are attached (the "Subpoenas"). Counsel for Charter Communications mailed the Subpoenas to counsel for JEA via Federal Express, and the Subpoenas were received in counsel's office on November 4, 2003. Counsel for JEA expressly reserved the right to file this motion to quash and/or for protective order. Because of the overbroad and unduly burdensome nature of the Subpoenas, as well as the proximity of the hearing, JEA respectfully requests emergency consideration of this Motion.

In support of this Motion, JEA would further state:

- 1. JEA filed an Application for a Certificate of Convenience and Necessity with the Authority on July 15, 2003.
- 2. The afternoon of October 10, 2003 some 88 days after the Application was filed
   Charter filed its Petition to Intervene in this docket. The Petition to Intervene, among other things, requested the opportunity for discovery.

- 3. On October 15, 2003, JEA filed its objection to the Petition to Intervene, asserting, among other things, that, as a matter of law, the Petition should be denied as being outside the 60 day statutory certification process and further asserting that the Petition cannot be granted without impairing the prompt and orderly conduct of the proceeding.
- 4. On October 16, 2003, the Hearing Officer held a conference call with counsel for JEA and counsel for Charter. During the conference call, the Hearing Officer granted Charter's intervention, but denied Charter's request to conduct discovery. On November 3, 2003, the Hearing Officer entered an Order to this effect, stating on page 4 "discovery of JEA's position would not be necessary."
- 5. At some time, counsel for Charter presented the Subpoenas to the Hearing Officer for issuance, and on November 3, 2003, counsel for Charter forwarded the Subpoenas to counsel for JEA.
  - 6. The Subpoenas include the following extremely broad listing of "items to bring":

Any and all documents or other written information regarding or in any way relating to Jackson Energy Authority's application for a Certificate of Convenience and Necessity in this matter, including, but not limited to: contracts or agreements with customers, including drafts or proposed models for same; business plans or proposals; financial statements or projections, including balance sheets, income statements and statements of cash flows; engineering reports or proposals; advertising materials, whether currently being used or being considered for future use; contracts or agreements with consultants, including drafts or proposed models for same; and public relations materials, whether currently being used or being considered for future use; as well as documents relating to Jackson Energy Authority's willingness and/or ability to comply with all applicable rules and regulations in Tennessee pertaining to the provision of telecommunications services within Madison County, Tennessee.

7. On November 4, 2003, JEA filed the pre-filed rebuttal testimonies of John Williams, Dana R. Wheeler and Kim Kersey, each of whom will be available at the hearing already.

- 8. The hearing in this matter is scheduled for November 10, 2003, and JEA is in the process of preparing for the hearing.
- 9. Counsel for JEA has conferred with counsel for Charter concerning this matter, and discussions are on-going. However, given the proximity of the hearing as well as the extremely broad nature of the requests, JEA has filed this Motion and seeks resolution of the issue at the Hearing Officer's first opportunity.

## **GROUNDS FOR THE MOTION**

- 10. The Subpoenas are in violation of the rules of the Authority. The rules provide at Rule 1220-1-2-.13 that subpoenas and subpoenas duces tecum shall be issued at the request of any party, but this section concludes with a very clear statement relevant to this motion: "This section may not be used to circumvent the provisions of Rule 1220-1-2-.11."
- 11. Rule 1220-1-2-.11 governs discovery in contested cases, and that rule provides that discovery is permissive. In his November 3, 2003 order, the Hearing Officer denied Charter's request for discovery. The Subpoenas are a clear attempt to circumvent the provisions of Rule 1220-1-2-.11 as well as the Hearing Officer's order, and the Hearing Officer should quash the Subpoenas in full.
- 12. The Subpoenas are also overly broad, unduly burdensome, oppressive and seek information that is unreasonably cumulative or duplicative.

WHEREFORE, JEA ask that the Subpoenas be quashed as an unauthorized attempt to "circumvent" the Hearing Officer's discovery order or in the alternative, that a protective order be entered pursuant and that JEA be granted such other and further relief to which it may be entitled.

Respectfully submitted this 6th day of November, 2003.

Carlos C. Smith (TN BPR No. 1710)

Mark W. Smith (TN BPR No. 16908)

Counsel for Jackson Energy Authority

Strang, Fletcher, Carriger, Walker, Hodge & Smith, PLLC

400 Krystal Building

One Union Square

Chattanooga, Tennessee 37402

Telephone:

(423) 265-2000

Facsimile:

(423) 756-5861

## CERTIFICATE OF SERVICE

I certify that on this 6<sup>th</sup> day of November, 2003, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage prepaid to counsel of record listed below.

Henry Walker, Esq. Boult Cummings Conners & Berry, PLC 414 Union Street, Suite 1500 Nashville, Tennessee 37219

Charles B. Welch, Jr., Esq, Farris, Mathews, Branan, Bobango & Helen, PLC 618 Church Street, Suite 300 Nashville, Tennessee 37219

> For: Strang, Fletcher, Carriger, Walker Hodge & Smith, PLLC

STATE OF TENNESSEE TENNESSEE REGULATORY AUTHORITY		SUBPOENA (ORDER TO APPEAR)	CIVIL ACTION
IN RE: APPLICATION OF JACKS	ON ENERGY ALITE	DUCES TECUM	DOCKET NO. 03-00438
TO: (NAME ADDRESS & TELECHONE NUM	ST STERGY AUT	HORITY FOR A CERTIFICATE OF CO	ONVENIENCE AND NECESSITY
TO: (NAME, ADDRESS, & TELEPHONE NUM Mr. Thomas E. Namey		Method of Service:	
Senior VP of Electric Di- Jackson Energy Authorit	vision	Davidson County Sheriff	
119 East College Street	У	□ Personal Service	
Jackson, TN 38301 (731) 422-7500		☐ Out of County Sheriff	
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STATE OF TE	NNESSEE		SUBPOENA	An ///		
TENNESSEE REGULATORY		(ORDER TO APPEAR)	CIVIL ACTION			
AUTHORITY			(ORDER TO APPEAR)			
IN RE: APPLICA	TION OF IACKS	ON ENERGY	DUCES TECUM	DOCKET NO. 03-00438		
TO: 40015	TOTOT JACKS	ON ENERGY AL	JTHORITY FOR A CERTIFICATE OF (	CONVENIENCE AND NECESSIT		
TO: (NAME, ADDRESS	5. & TELEPHONE NUM n Kersey	BER OF WITNESS)	Method of Service:			
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119 Eas	t College Street		Personal Service			
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	STATE OF TENNESSEE TENNESSEE RECULATOR AUTHORITY	Y	SUBPOENA (ORDER TO APPEAR)	CIVIL ACTION
			DUCES TECUM	DOCKET NO. 03-00438
	IN RE: APPLICATION OF JAC	CKSON ENERGY AU	THORITY FOR A CERTIFICATE OF C	CONVENIENCE AND NECESSITY
	TO: (NAME, ADDRESS, & TELEPHONE Mr. Dana R. Wheeler	NUMBER OF WITNESS	Method of Service:	
	Senior VP and CFO	7	☐ Davidson County Sheriff	
	Jackson Energy Auth	ority		
- 1	119 East College Stre Jackson, TN 38301	eet	☐ Personal Service	1
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TENNESSEE RE AUTHORITY	GULATORY		SUBPOENA (ORDER TO APPEAR)	CIVIL ACTION
<del></del>			DUCES TECUM	DOCKET NO. 03-00438
IN RE: APPLICAT	TION OF JACKS	ON ENERGY AUT	THORITY FOR A CERTIFICATE OF CO	ONVENIENCE AND NECESSITY
TO: (NAME, ADDRESS	, & TELEPHONE NUM	BER OF WITNESS)	Method of Service:	1.2000111
Presider	t and CEO		☐ Davidson County Sheriff	
Jackson	Energy Authorit	7	Personal Service	
119 East College Street Jackson, TN 38301				
(731) 42			Out of County Sheriff	
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STATE OF TENNESSEE					
TENNESSEE REGULATORY		SUBPOENA	CIVIL ACTION		
AUTHORITY		(ORDER TO APPEAR)			
		DUCES TECUM	DOCKET NO. <u>03-00438</u>		
IN RE: APPLICATION OF JACKS	ON ENERGY AUT	HORITY FOR A CERTIFICATE OF CO	INVENIENCE AND NECESSITY		
Mr. Darrell T. Pode	BER OF WITNESS)	Method of Service:			
Telecommunications Pro	ect Manager	Davidson County Sheriff			
119 East College Street	Jackson Energy Authority		☐ Personal Service		
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